

JOURNAL OF THE HOUSE

EIGHTY-NINTH SESSION

FIFTH DAY

STATE OF SOUTH DAKOTA
House of Representatives, Pierre
Tuesday, January 21, 2014

The House convened at 2:00 p.m., pursuant to adjournment, the Speaker presiding.

The prayer was offered by the Chaplain, Pastor Paul Bly, followed by the Pledge of Allegiance led by House pages Elise Haugaard and Jonathan Haugaard.

Roll Call: All members present except Reps. Heinert, Killer, Magstadt, and Werner who were excused.

APPROVAL OF THE JOURNAL

MR. SPEAKER:

The Committee on Legislative Procedure respectfully reports that the Chief Clerk of the House has had under consideration the House Journal of the fourth day.

All errors, typographical or otherwise, are duly marked in the temporary journal for correction.

And we hereby move the adoption of the report.

Respectfully submitted,
Brian G. Gosch, Chair

Which motion prevailed.

REPORTS OF STANDING COMMITTEES

MR. SPEAKER:

The Committee on Judiciary respectfully reports that it has had under consideration HB 1051 and returns the same with the recommendation that said bill do pass.

Also MR. SPEAKER:

The Committee on Judiciary respectfully reports that it has had under consideration HB 1050 and returns the same with the recommendation that said bill do pass and be placed on the consent calendar.

Also MR. SPEAKER:

The Committee on Judiciary respectfully reports that it has had under consideration HB 1054 and returns the same with the recommendation that said bill be amended as follows:

1054ja

On the printed bill, delete everything after the enacting clause and insert:

" Section 1. Terms used in this Act mean:

- (1) "Director," the director of the South Dakota Division of Insurance;
- (2) "Insured," the party named on a policy or certificate as the individual with legal rights to the benefits provided by the policy;
- (3) "Insurer," a person, reciprocal exchange, interinsurer, Lloyd's insurer, fraternal benefit society, and any other legal entity engaged in the business of insurance, including claim agents, brokers, adjusters, and third party administrators. The term also includes medical service plans, hospital service plans, health maintenance organizations, prepaid limited health care service plans, dental plans, and optometric plans;
- (4) "Person," a natural or artificial entity, including individuals, partnerships, associations, trusts, or corporations;
- (5) "Policy," or "certificate," a contract of insurance, indemnity, medical, health, or hospital service, or annuity issued. The term does not include contracts of workers' compensation, fidelity, suretyship, or boiler and machinery insurance.

Section 2. The provisions of this Act set forth standards for claim investigation and disposition of claims arising under policies or certificates of insurance issued to residents of

1 South Dakota. It does not apply to claims involving workers' compensation, fidelity, suretyship,
2 or boiler and machinery insurance. Nothing in this Act may be construed to create or imply a
3 private cause of action for violation of this Act.

4 Section 3. Any act by an insurer, if committed in violation of this section, is an unfair claims
5 practice if:

- 6 (1) It is committed flagrantly and in conscious disregard of the provisions of this Act or
7 any rule promulgated pursuant to this Act; or
- 8 (2) It is committed with such frequency to indicate a general business practice to engage
9 in that type of conduct.

10 Section 4. Any of the following acts by an insurer, if committed in violation of section 3 of
11 this Act, is an unfair claims practice:

- 12 (1) Knowingly misrepresents to a claimant or an insured a relevant fact or policy
13 provision relating to coverages at issue;
- 14 (2) Fails to acknowledge with reasonable promptness pertinent communications with
15 respect to claims arising under its policies;
- 16 (3) Fails to adopt and implement reasonable standards to promptly complete claim
17 investigations and settlement of claims arising under its policies;
- 18 (4) Fails to make a good faith attempt to effectuate prompt, fair, and equitable settlement
19 of claims submitted in which liability has become reasonably clear;
- 20 (5) Compels an insured or beneficiary to institute a suit to recover an amount due under
21 its policies by offering substantially less than the amount ultimately recovered in a
22 suit brought by the insured or beneficiary;
- 23 (6) Refuses to pay claims without conducting a reasonable claim investigation;
- 24 (7) Fails to affirm or deny coverage of claims within a reasonable time after having
25 completed a claim investigation related to the claim;
- 26 (8) Attempts to settle a claim for less than the amount that a reasonable person would
27 believe the insured or beneficiary is entitled by reference to written or printed
28 advertising material accompanying or made part of an application;
- 29 (9) Attempts to settle a claim on the basis of an application that was materially altered
30 without notice to, or knowledge or consent of, the insured;
- 31 (10) Makes a claim payment to an insured or beneficiary without indicating the coverage
32 under which each payment is being made;

1 (11) Unreasonably delays a claim investigation or payment of a claim by requiring both
2 a formal proof of loss form and subsequent verification that would result in
3 duplication of information and verification appearing in the formal proof of loss
4 form;

5 (12) Fails, in the case of a claim denial or offer of compromise settlement, to promptly
6 provide a reasonable and accurate explanation of the basis for such action; and

7 (13) Fails to provide forms necessary to present a claim within fifteen days of a request
8 with reasonable explanations regarding their use.

9 Section 5. If the director has reasonable cause to believe that an insurer doing business in
10 this state is engaging in an unfair claims practice and that a proceeding in respect thereto is in
11 the public interest, the director may issue and serve upon the insurer a notice of hearing, which
12 shall set a hearing date not less than thirty days from the date of the notice. The hearing shall
13 be conducted pursuant to chapter 1-26.

14 Section 6. If, after the hearing, the director finds an insurer has engaged in an unfair claims
15 practice, the director shall reduce the findings to writing and shall issue and serve the insurer
16 a copy of the findings and an order requiring the insurer to cease and desist from engaging in
17 the act or practice. The director may, at the director's discretion, order either or both of the
18 following:

19 (1) The insurer to pay a monetary penalty of not more than one thousand dollars for each
20 violation but not to exceed an aggregate penalty of one hundred thousand dollars,
21 unless the violation was committed flagrantly and in conscious disregard of this Act,
22 in which case the penalty may not be more than twenty-five thousand dollars for each
23 violation, but not to exceed an aggregate penalty of two hundred fifty thousand
24 dollars; and

25 (2) Suspension or revocation of the insurer's license if the insurer knew or reasonably
26 should have known it was in violation of this Act.

27 This section only applies to violations of this Act.

28 Section 7. The director may promulgate rules, pursuant to chapter 1-26, to carry out the
29 purposes of this Act. In promulgating rules, the director shall consider the impact of the rule on
30 the cost and availability of insurance in this state and the degree of protection that the rule will
31 have for the insurance buying public in this state. The rules are limited to the following areas:

32 (1) Definition of terms; and

33 (2) Record keeping."

1 1054jb

2 On amendment 1054ja, in subdivision (12) of Section 4, after ";" delete "and" and insert
3 "or".

4 And that as so amended said bill do pass.

5 Also MR. SPEAKER:

6 The Committee on Judiciary respectfully reports that it has had under consideration
7 HB 1052 and returns the same with the recommendation that said bill be amended as follows:

8 1052ja

9 On page 1, line 7, of the printed bill, after "pertaining to" remove the overstrikes from
10 "the".

11 On page 1, line 7, delete "a".

12 On page 1, line 13, after "parties" insert "to the remedial action".

13 And that as so amended said bill do pass and be placed on the consent calendar.

14 Respectfully submitted,
15 Brian G. Gosch, Chair

16 Also MR. SPEAKER:

17 The Committee on Health and Human Services respectfully reports that it has had under
18 consideration HB 1024 and returns the same with the recommendation that said bill do pass.

19 Also MR. SPEAKER:

20 The Committee on Health and Human Services respectfully reports that it has had under
21 consideration HB 1025 and returns the same with the recommendation that said bill be amended
22 as follows:

23 1025ja

24 On page 12 of the printed bill, delete lines 14 and 15, and insert "licensure as a nursing
25 facility administrator ~~must meet education and training requirements as follows~~ shall have at
26 least a baccalaureate degree and shall submit the following:".

27 On page 12, delete line 22, and insert "~~application~~ Verification of:".

1 On page 12, delete line 23.

2 On page 13, line 6, delete "(4)" and insert "(3)".

3 On page 13, line 7, delete "(5)" and insert "(4)".

4 On page 13, line 9, delete "(6)" and insert "(5)".

5 On page 13, line 12, delete "(7)" and insert "(6)".

6 1025jc

7 On page 4 of the printed bill, delete lines 9 to 17, inclusive.

8 And that as so amended said bill do pass.

9 Respectfully submitted,
10 Scott Munsterman, Chair

11 Also MR. SPEAKER:

12 The Committee on Transportation respectfully reports that it has had under consideration
13 HB 1036 and 1037 and returns the same with the recommendation that said bills do pass.

14 Also MR. SPEAKER:

15 The Committee on Transportation respectfully reports that it has had under consideration
16 HB 1042 and returns the same with the recommendation that said bill be amended as follows:

17 1042oa

18 On page 2, line 1, of the printed bill, delete "one" and insert "one-half".

19 On page 2, line 3, delete "ten" and insert "five".

20 1042ob

21 On page 2, line 2, of the printed bill, delete "tax" and insert "month".

22 And that as so amended said bill do pass.

23 Respectfully submitted,
24 Mike Verchio, Chair

1

MOTIONS AND RESOLUTIONS

2 HCR 1003 Introduced by: Representatives Bolin, Anderson, Bartling, Craig, Duvall,
3 Ecklund, Erickson, Feickert, Feinstein, Haggar (Don), Hawley, Heinemann (Leslie), Hickey,
4 Hoffman, Hunhoff (Bernie), Johns, Kaiser, Kirschman, Kopp, Langer, Latterell, Magstadt,
5 Mickelson, Nelson, Novstrup (David), Olson (Betty), Otten (Herman), Parsley, Qualm,
6 Rasmussen, Ring, Romkema, Rounds, Rozum, Schoenfish, Sly, Soli, Solum, Stalzer, Steele,
7 Tulson, Tyler, Verchio, Werner, Westra, Wick, and Wismer and Senators Lederman, Jones
8 (Tom), Lucas, Omdahl, Otten (Ernie), and Van Gerpen

9 A CONCURRENT RESOLUTION, Recognizing the outstanding public service of President
10 Calvin Coolidge and his support of Mount Rushmore.

11 WHEREAS, Calvin Coolidge was the thirtieth President of the United States; and

12 WHEREAS, Calvin Coolidge advanced politically, both in the state of Massachusetts and
13 in the nation, serving as City Councilman, State Representative, Mayor, State Senator,
14 Lieutenant Governor, and Governor in the state of Massachusetts, and serving the nation as Vice
15 President and finally, President of the United States; and

16 WHEREAS, Calvin Coolidge, while serving as President, along with his wife, Grace,
17 experienced the death of their teenage son, Calvin, Jr.; and

18 WHEREAS, Calvin Coolidge visited Pierre in 1927, and became the first President to visit
19 our Capitol; and

20 WHEREAS, Calvin Coolidge spent more time in South Dakota as President than any other
21 United States President; and

22 WHEREAS, Calvin Coolidge, during his term in office, was a dedicated backer of the
23 Mount Rushmore project, and helped dedicate Mount Rushmore in 1927:

24 NOW, THEREFORE, BE IT RESOLVED, by the House of Representatives of the Eighty-
25 Ninth Legislature of the State of South Dakota, the Senate concurring therein, that we recognize
26 and honor President Calvin Coolidge for his public frugality, personal courage, dedication to
27 public service, and for seeing the potential greatness of the Mount Rushmore project.

28 Was read the first time and the Speaker waived the committee referral.

1 **FIRST READING OF HOUSE BILLS AND JOINT RESOLUTIONS**

2 HB 1065 Introduced by: Representatives Olson (Betty), Kaiser, Kopp, May, and Russell
3 and Senators Monroe, Jensen, and Maher

4 FOR AN ACT ENTITLED, An Act to provide for the issuance of a permit to carry a
5 concealed pistol without a fee.

6 Was read the first time and referred to the Committee on Local Government.

7 HB 1066 Introduced by: Representatives Olson (Betty), Greenfield, Kaiser, and Russell and
8 Senators Jensen and Monroe

9 FOR AN ACT ENTITLED, An Act to revise certain provisions restricting the presence of
10 firearms in certain public buildings.

11 Was read the first time and referred to the Committee on Local Government.

12 HB 1067 Introduced by: Representatives Olson (Betty), Kaiser, Kopp, and May and
13 Senators Maher, Jensen, and Monroe

14 FOR AN ACT ENTITLED, An Act to require students in grades one and two to be tested
15 before being promoted to the next grade.

16 Was read the first time and referred to the Committee on Education.

17 HB 1068 Introduced by: Representatives Olson (Betty), Greenfield, Kaiser, Kopp, May,
18 and Russell and Senators Monroe, Jensen, and Maher

19 FOR AN ACT ENTITLED, An Act to revise provisions relating to the use of dogs in
20 hunting mountain lions.

21 Was read the first time and referred to the Committee on Agriculture and Natural
22 Resources.

23 HB 1069 Introduced by: Representatives Bartling, Gibson, Gosch, Hunhoff (Bernie),
24 Johns, Lust, Parsley, and Stevens and Senators Vehle, Ewing, Frerichs, Kirkeby, Lederman,
25 Novstrup (Al), Rave, and Tieszen

26 FOR AN ACT ENTITLED, An Act to revise the maximum redemption fee for property
27 tax deeds.

28 Was read the first time and referred to the Committee on Taxation.

1 HB 1070 Introduced by: Representatives Mickelson, Bolin, Carson, Conzet, Cronin,
2 Duvall, Ecklund, Gosch, Haggar (Don), Hawks, Hawley, Hoffman, Hunhoff (Bernie), Langer,
3 Lust, May, Munsterman, Novstrup (David), Otten (Herman), Romkema, Schoenfish, Soli,
4 Solum, Stevens, Tulson, Verchio, Werner, Westra, Wick, and Wink and Senators Tidemann,
5 Brown, Buhl O'Donnell, Curd, Heineman (Phyllis), Otten (Ernie), Peters, Rave, Soholt, Sutton,
6 and White

7 FOR AN ACT ENTITLED, An Act to sunset certain tax refund claims for an economic
8 development incentive program that has been previously terminated and to declare an
9 emergency.

10 Was read the first time and referred to the Committee on State Affairs.

11 HB 1071 Introduced by: Representatives Otten (Herman), Ecklund, Haggar (Don), Haggar
12 (Jenna), Hawks, Heinemann (Leslie), Hickey, Hoffman, Johns, Latterell, Magstadt, Rozum, Sly,
13 Tulson, Werner, and Wick and Senators Rave, Holien, Otten (Ernie), Peters, and Welke

14 FOR AN ACT ENTITLED, An Act to change the procedure for a minor boundary change.

15 Was read the first time and referred to the Committee on Education.

16 HB 1072 Introduced by: Representatives Parsley, Bartling, Gibson, Hawks, Hawley,
17 Kirschman, Schoenfish, and Tyler and Senators Begalka, Frerichs, and Jones (Tom)

18 FOR AN ACT ENTITLED, An Act to provide for the titling, registration, and operation
19 of golf carts.

20 Was read the first time and referred to the Committee on Transportation.

21 HB 1073 Introduced by: Representatives Gosch, Cronin, Johns, Kopp, Stevens, Westra,
22 and Wink and Senators Solano, Holien, Kirkeby, and White

23 FOR AN ACT ENTITLED, An Act to provide for the cancellation of expired mechanic's
24 and materialman's liens.

25 Was read the first time and referred to the Committee on Judiciary.

HB 1074 Introduced by: Representatives Feinstein, Bartling, Gibson, Gosch, Hunhoff (Bernie), Johns, Lust, and Stevens and Senators Jones (Chuck), Frerichs, Kirkeby, Lederman, Maher, Novstrup (Al), Rave, Rhoden, and Tieszen

FOR AN ACT ENTITLED, An Act to revise certain provisions concerning actions prohibited near polling places.

Was read the first time and referred to the Committee on Local Government.

SECOND READING OF HOUSE BILLS AND JOINT RESOLUTIONS

HB 1016: FOR AN ACT ENTITLED, An Act to repeal certain outdated or unnecessary statutes and administrative rules pertaining to the Department of Public Safety.

Was read the second time.

The question being "Shall HB 1016 pass?"

And the roll being called:

Yeas 65, Nays 1, Excused 4, Absent 0

Yeas:

Anderson; Bartling; Bolin; Cammack; Campbell; Carson; Conzet; Craig; Cronin; Dryden; Duvall; Ecklund; Erickson; Feickert; Feinstein; Gibson; Greenfield; Haggar (Don); Haggar (Jenna); Hajek; Hawks; Hawley; Heinemann (Leslie); Hickey; Hoffman; Hunhoff (Bernie); Johns; Kirschman; Kopp; Langer; Latterell; Lust; May; Mickelson; Munsterman; Nelson; Novstrup (David); Olson (Betty); Otten (Herman); Parsley; Peterson; Qualm; Rasmussen; Ring; Romkema; Rounds; Rozum; Russell; Schaefer; Schoenfish; Schrempp; Sly; Soli; Solum; Stalzer; Steele; Stevens; Tulson; Tyler; Verchio; Westra; Wick; Wink; Wismer; Speaker Gosch

Nays:

Kaiser

Excused:

Heinert; Killer; Magstadt; Werner

So the bill having received an affirmative vote of a majority of the members-elect, the Speaker declared the bill passed and the title was agreed to.

HB 1026: FOR AN ACT ENTITLED, An Act to provide for the transfer of the state's interests in the Webster National Guard armory and underlying land to the city of Webster.

Was read the second time.

1 The question being "Shall HB 1026 pass?"

2 And the roll being called:

3 Yeas 66, Nays 0, Excused 4, Absent 0

4 Yeas:

5 Anderson; Bartling; Bolin; Cammack; Campbell; Carson; Conzet; Craig; Cronin; Dryden;
6 Duvall; Ecklund; Erickson; Feickert; Feinstein; Gibson; Greenfield; Haggar (Don); Haggar
7 (Jenna); Hajek; Hawks; Hawley; Heinemann (Leslie); Hickey; Hoffman; Hunhoff (Bernie);
8 Johns; Kaiser; Kirschman; Kopp; Langer; Latterell; Lust; May; Mickelson; Munsterman;
9 Nelson; Novstrup (David); Olson (Betty); Otten (Herman); Parsley; Peterson; Qualm;
10 Rasmussen; Ring; Romkema; Rounds; Rozum; Russell; Schaefer; Schoenfish; Schrempp; Sly;
11 Soli; Solum; Stalzer; Steele; Stevens; Tulson; Tyler; Verchio; Westra; Wick; Wink; Wismer;
12 Speaker Gosch

13 Excused:

14 Heinert; Killer; Magstadt; Werner

15 So the bill having received an affirmative vote of a majority of the members-elect, the
16 Speaker declared the bill passed and the title was agreed to.

17 HB 1027: FOR AN ACT ENTITLED, An Act to provide for the transfer of the state's
18 interests in the Watertown National Guard armory to the city of Watertown.

19 Was read the second time.

20 The question being "Shall HB 1027 pass?"

21 And the roll being called:

22 Yeas 66, Nays 0, Excused 4, Absent 0

23 Yeas:

24 Anderson; Bartling; Bolin; Cammack; Campbell; Carson; Conzet; Craig; Cronin; Dryden;
25 Duvall; Ecklund; Erickson; Feickert; Feinstein; Gibson; Greenfield; Haggar (Don); Haggar
26 (Jenna); Hajek; Hawks; Hawley; Heinemann (Leslie); Hickey; Hoffman; Hunhoff (Bernie);
27 Johns; Kaiser; Kirschman; Kopp; Langer; Latterell; Lust; May; Mickelson; Munsterman;
28 Nelson; Novstrup (David); Olson (Betty); Otten (Herman); Parsley; Peterson; Qualm;
29 Rasmussen; Ring; Romkema; Rounds; Rozum; Russell; Schaefer; Schoenfish; Schrempp; Sly;
30 Soli; Solum; Stalzer; Steele; Stevens; Tulson; Tyler; Verchio; Westra; Wick; Wink; Wismer;
31 Speaker Gosch

32 Excused:

33 Heinert; Killer; Magstadt; Werner

1 HC 1002 Introduced by: Representatives Bolin, Anderson, Bartling, Craig, Duvall,
2 Erickson, Feickert, Feinstein, Hagggar (Don), Hawley, Heinemann (Leslie), Hickey, Hoffman,
3 Hunhoff (Bernie), Johns, Kaiser, Kirschman, Kopp, Langer, Latterell, Magstadt, Mickelson,
4 Nelson, Novstrup (David), Olson (Betty), Otten (Herman), Parsley, Qualm, Rasmussen, Ring,
5 Romkema, Rounds, Rozum, Schoenfish, Sly, Soli, Solum, Stalzer, Steele, Tulson, Verchio,
6 Werner, Westra, Wick, and Wismer and Senators Lederman, Ewing, Heineman (Phyllis),
7 Hunhoff (Jean), Jones (Chuck), Jones (Tom), Kirkeby, Lucas, Maher, Monroe, Omdahl, Otten
8 (Ernie), Peters, Soholt, Solano, Tidemann, Tieszen, Van Gerpen, and Vehle

9 A LEGISLATIVE COMMEMORATION, Honoring the 2013 Canton High School football
10 team.

11 WHEREAS, the 2013 Canton C-Hawk football team finished the 2013 season with an 11-1
12 record; and

13 WHEREAS, the C-Hawk football team defeated the Class 11A champion West Central 23-0
14 during the regular season; and

15 WHEREAS, the C-Hawk football team defeated previously undefeated Aberdeen Roncalli
16 and Winner during the Class 11B playoffs; and

17 WHEREAS, the C-Hawk football team set numerous school records during the season; and

18 WHEREAS, the C-Hawk football team shut out five of its worthy opponents during the
19 2013 season; and

20 WHEREAS, the C-Hawks defeated the Parkston Trojans, a very worthy opponent, 20-14
21 in the state Class 11B football championship game:

22 NOW, THEREFORE, BE IT COMMEMORATED, by the Eighty-Ninth Legislature of the
23 State of South Dakota, that the Legislature honors the 2013 Canton High School C-Hawk
24 football team on its Class 11B state football championship and especially honors head coach
25 Rich Lundstrom, chief assistant Matt David, the entire coaching staff, and the entire team for
26 their outstanding efforts in the 2013 season.

27 Rep. Steele moved that the House do now adjourn, which motion prevailed and at
28 2:25 p.m. the House adjourned.

29 Arlene Kvislen, Chief Clerk

